IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION No. 416 /2001

(WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA)

PETITIONER:

1. **AGRAWAL AUTO TRADE, RAIPUR ICE FACTORY BUILDING, FAFADIH RAIPUR THROUGH IT'S PROPRIETOR Mr. DEEPAK R. AGRAWAL.**
2. **VINOD R. AGRAWAL AGE ABOUT 47 YEAR OCCUPATION BUSINESS, PROPRITOR AGRAWAL AUTO TRADE R/o HALWAI LINE SADAR BAZAR, RAIPUR.**

-: VERSUS: -

RESPONDENTS: -

1. **MADHYA PRADESH FINANCIAL CORPORATION A BODY INCORPORATED UNDER STATE FINANCIAL CORPORATION ACT 1951 HAVING IT'S REGISTERED OFFICE AT AGRA BOMBAY ROAD INDORE (M.P.)**
2. **MANAGING DIRECTOR MADHYA PRADESH FINANCIAL CORPORATION AGRA BOMBAY ROAD INDORE .**
3. **GENERAL MANAGAR / BRANCH MANAGAR M.P.F.C. RAIPUR BRANCH RAIPUR.**

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. **Particulars of the petitioner:**

As detailed above in cause title

XI-HC-22

(102)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. No. 516 of सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

04.09.2002

Shri Manindra Shrivastava alongwith Shri Manoj Paranjape, counsel for the petitioner.

Shri P. Diwakar, counsel for the Financial Corporation.

Heard.

Admittedly, the petitioner had taken a loan from the M.P. Financial Corporation which has not been repaid. Accordingly, in the light of the decision of the Supreme Court in **Harayana Financial Corporation & Anr. V. Ms. Jagdamba Oil Mills & Anr.**, JT 2002 (1) SC 482, no useful purpose will be served in keeping the writ petition pending as the same can be disposed of at the admission stage.

The petitioner had applied for loan of Rs.15,00,000/- which was sanctioned on 25.2.1999 and was duly disbursed. However, there has been a default in repayment of the principal amount and interest thereon. Hence, a notice under Section 29 of the State Financial Corporation Act, was issued. Feeling aggrieved therewith, the petitioner has approached this Court.

On 28.3.2001 while issuing notices to respondents, a Bench of this Court had directed the M.P. Financial Corporation not to take any action against the petitioner under Section 29 of the State Financial Corporation Act and accordingly no coercive steps were taken. The matter came up before this Court on various dates and time was granted to the petitioners to try and liquidate the loan. That, however, could not be done.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर (103)

आदेश पत्रक

WP 416/01

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

According to the learned counsel for the Corporation, a total sum of Rs.22,88,582/- which includes the principal amount, penal interest and legal charges are due against the petitioner. However, there is a dispute raised by the petitioner regarding the actual amount which is due against him.

In Haryana Financial Corporation case, the Supreme Court has overruled the decision of **Mahesh Chandra's case** (JT 1992 (2) SC 326) and has observed in paragraph 17 of its judgment that ".....guidelines issued in Mahesh Chandra's case place unnecessary restrictions on the exercise of power by the financial corporation contained in section 29 of the Act by requiring the defaulting unit holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in **Mahesh Chandra's case** will only lead to further delay in realization of the dues by the corporation by sale of assets. It is always expected that the corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible."

Accordingly, following the decision of the Apex Court, this writ petition is disposed of on the following terms and conditions:

a) The Corporation shall give the details of outstanding amount to the petitioner by 16th September, 2002.

b) The petitioner shall take all efforts to pay all the dues alongwith interest to the Corporation by 31st December, 2002, failing which, the Financial Corporation shall be at liberty to proceed to dispose of the property in

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(104)

आदेश पत्रक

मामला क्रमांक W.P. No. 416/2001 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

powers under Section 29 of the State Financial Corporation.

It is made clear that the petitioner may make efforts to sell the property, which has not been seized so far. But this should be done with due and prior intimation to the Financial Corporation which should be supplied with all details. Any amount received towards consideration for sale of the mortgaged property, will be first adjusted towards the dues. Any amount, which has been paid during the pendency of the writ petition, shall be credited against the dues.

With the observations and directions made above, the writ petition stands disposed of.

Sd/-
P.C. Naik
Judge